

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re: Daniel J. Decker and Becky A. Decker,

Debtors: Chapter 13 Case  
Case No. BKY 04-31806-GFK.

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**NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM STAY**

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TO: The Debtors, Debtors' Attorney, Chapter 13 Trustee, United States Trustee, and the other parties in interest specified in Local Rule 9013-3(a).

1. **Minnesota Housing Finance Agency (Movant)**, a secured creditor of the Debtors herein, by its undersigned attorney, moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 10:30 o'clock a.m., on October 25, 2004, before the Honorable Gregory F. Kishel, in Courtroom 228B, U.S. Courthouse, 316 North Robert Street, St. Paul, MN, or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than October 20, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 14, 2004, which is seven (7) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT A HEARING.

4. This motion is filed pursuant to Bankruptcy Rule 4001 and Local Rule 9013-2 and Movant seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain real property owned by the Debtors and subject to Movant's first mortgage lien.

5. The Petition commencing this Chapter 13 Case was filed on March 25, 2004, and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §157(a), §1334, 11 U.S.C. §362(d), Bankruptcy Rule 5005, Local Rule 1070-1 and other applicable rules. This proceeding is a core proceeding.

6. By certain mortgage dated April 18, 1979, in the original principal amount of \$40,200.00 (**Mortgage**), Movant acquired a first mortgagee's interest in the following real property (**Property**):

Lot One (1), Block One (1), REPLAT of LOTS 1-5-6, Block One, Zoschke's Addition to Shakopee.

The Mortgage was filed for record in the office of the County Recorder, in and for Scott County, Minnesota, on May 4, 1979, as document number 169435.

7. The terms of Debtors' confirmed Chapter 13 plan (**Plan**) require Debtors to make post-petition Mortgage payments directly to Movant when due. Debtors are delinquent with respect to post-petition Mortgage payments for the months of August 2004 through October 2004 in a total amount of \$1,020.11, including late charges. Movant has also incurred attorney's fees and costs in the bringing of this motion.

8. Debtors' Three (3) month delinquency under the terms of the Mortgage constitute cause, within the meaning of 11 U.S.C. §362(d)(1), entitling Movant to relief from the automatic stay. Movant does not have, and has not been offered, adequate protection of its interest in the Property.

**WHEREFORE**, Movant, by its undersigned attorney, moves the Court for an order modifying the automatic stay of 11 U.S.C. §362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as the Court may deem to be just, fair and equitable.

Dated this 5th day of October, 2004.

**PETERSON, FRAM AND BERGMAN**

A Professional Association

BY: /e/ Michael T. Oberle  
**Michael T. Oberle**, Atty. Reg. #130126  
**Attorneys for Movant**  
Suite 300, 50 East Fifth Street  
St. Paul, Minnesota 55101-1197  
Telephone: (651) 291-8955

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re: Daniel J. Decker and Becky A. Decker,

Debtors: Chapter 13 Case  
Case No. BKY 04-31806-GFK.

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AFFIDAVIT IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY

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STATE OF TEXAS            )  
                                  ) ss.  
COUNTY OF TRAVIS        )

I, LILIANA RAMIREZ, your affiant, being first duly sworn on  
oath, state as follows:

1. I am an employee of Guaranty Residential Lending, Inc., the company which  
is the duly authorized loan servicer for the subject mortgage which is held by **Minnesota  
Housing Finance Agency (Movant)**, and I have personal knowledge of the facts stated herein.

2. I make this Affidavit in support of a motion to lift, modify or condition the  
bankruptcy stay.

3. Debtors are the mortgagors on a mortgage dated April 18, 1979 which covers real property located in Scott County and legally described as follows:

Lot One (1), Block One (1), REPLAT of LOTS 1-5-6, Block One, Zoschke's Addition to Shakopee,

and which is commonly known as: 2068 Hilldale Drive, Shakopee, MN 55379. The mortgage was given to secure a promissory note. Copies of the note and the mortgage are attached hereto as Exhibit A and Exhibit B, respectively, and incorporated herein by this reference. The mortgage was assigned to Movant on April 18, 1979. A copy of the assignment is attached hereto as Exhibit C and incorporated herein by this reference.

4. On or about March 25, 2004, Debtors filed a Petition under Chapter 13 of Title 11 U.S. Code in the United States Bankruptcy Court for the District of Minnesota.

5. Movant filed a Proof of Security Interest Claim with the Court on or about April 26, 2004.

6. Debtors' Chapter 13 Plan (**Plan**) provides that Debtors will maintain payments due during the pendency of this case and cure an existing default within a reasonable time.

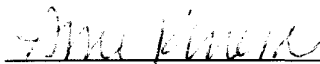
7. Debtors have failed to make Three (3) payments, which were due during the pendency of this case, resulting in an arrearage of \$1,020.11, including late charges. Movant has also incurred attorney's fees and costs in the bringing of this motion.

8. I have read the Motion in this matter, and it is true to the best of my knowledge,  
information and belief.

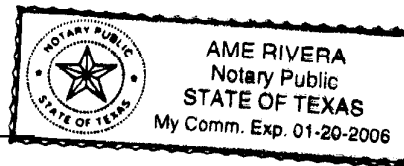
9. Further, I saith not.

  
LILIANA RAMIREZ

Subscribed and sworn to before me  
this 4th day of October, 2004.



Notary Public



705 096A

## NOTE

US \$ 60,200.00

Edina

Minnesota

City

April 18

1979

FOR VALUE RECEIVED, the undersigned ("Borrower") promise(s) to pay, or order, the principal sum of Forty thousand two hundred and no/100ths Dollars, with interest on the unpaid principal balance from the date of this Note, until paid, at the rate of 6-3/4% percent per annum. Principal and interest shall be payable at Southwest Fidelity State Bank of Edina or such other place as the Note holder may designate, in consecutive monthly installments of Two hundred sixty and 90/100ths Dollars (US \$ 260.90) on the 1st day of each month beginning 1406 1979. Such monthly installments shall continue until the entire indebtedness evidenced by this Note is fully paid, except that any remaining indebtedness, if not sooner paid, shall be due and payable on May 1st, 2009.

If any monthly installment under this Note is not paid when due and remains unpaid after a date specified by a notice to Borrower, the entire principal amount outstanding and accrued interest thereon shall at once become due and payable at the option of the Note holder. The date specified shall not be less than thirty days from the date such notice is mailed. The Note holder may exercise this option to accelerate during any default by Borrower regardless of any prior forbearance. If suit is brought to collect this Note, the Note holder shall be entitled to collect all reasonable costs and expenses of suit, including, but not limited to, reasonable attorney's fees.

Borrower shall pay to the Note holder a late charge of two percent of any monthly installment not received by the Note holder within fifteen days after the installment is due.

Borrower may prepay the principal amount outstanding in whole or in part. The Note holder may require that any partial prepayments (i) be made on the date monthly installments are due and (ii) be in the amount of that part of one or more monthly installments which would be applicable to principal. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date of any subsequent monthly installments or change the amount of such installments, unless the Note holder shall otherwise agree in writing.

Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors and endorsers hereof. This Note shall be the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

Any notice to Borrower provided for in this Note shall be given by mailing such notice by certified mail addressed to Borrower at the Property Address stated below, or to such other address as Borrower may designate by notice to the Note holder. Any notice to the Note holder shall be given by mailing such notice by certified mail, return receipt requested, to the Note holder at the address stated in the first paragraph of this Note, or at such other address as may have been designated by notice to Borrower.

The indebtedness evidenced by this Note is secured by a Mortgage, dated April 18, 1979, and reference is made to the Mortgage for rights as to acceleration of the indebtedness evidenced by this Note.

Daniel J. Decker

2068 Hillside Dr.

Decker, J. Decker

Shakopee, Minnesota 55379

Property Address

(Execute Original Only)



## MORTGAGE

THIS MORTGAGE is made this 18th day of April, 1979, between the Mortgagor, Daniel J. Decker and Becky A. Decker, husband and wife, (herein "Borrower"), and the Mortgagee, Southwest Fidelity State Bank of Edina, a corporation organized and existing under the laws of The State of Minnesota, whose address is 7600 Parklawn Avenue, Edina, Minnesota 55435 (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of Forty thousand two hundred and no/100ths Dollars, which indebtedness is evidenced by Borrower's note dated April 18, 1979 (herein "Note"), providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on May 1st, 2009

To SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon, the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Borrower herein contained, and (b) the repayment of any future advances, with interest thereon, made to Borrower by Lender pursuant to paragraph 21 hereof (herein "Future Advances"), Borrower does hereby grant and convey to Lender, with power of sale, the following described property located in the County of Scott State of Minnesota:

Lot One (1), Block One (1), REPLAT OF LOTS 1-5-6, Block One, Zarechko's Addition to Shakopee, according to the recorded plat thereof on file and of record in the office of the Register of Deeds in and for Scott County, Minnesota.

FOR RECORDATION OF THIS INSTRUMENT SHOULD BE SENT TO:

NAME: Southwest Fidelity State Bank  
7600 Parklawn Avenue  
ADDRESS: Edina, Minnesota 55435

ZIP CODE: \_\_\_\_\_

which has the address of, 2068 Hildale Drive Shakopee  
(Street) (City)  
Minnesota 55379 (herein "Property Address");  
(State and Zip Code)

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water slack, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are herein referred to as the "Property".

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to declarations, easements or restrictions of record, if any.

MINNESOTA - 1 to 4 Family - 6/75 - FOMA/FILMS VENDOR INSTRUMENT

FS-2

manner prescribed by applicable law. Lender or Lender's designee may purchase Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all sums secured by this Mortgage; (b) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable attorney's fees and costs of title evidence; and (c) the excess, if any, to the person or persons legally entitled thereto.

19. **Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Mortgage, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to the earlier of (i) sale of the Property pursuant to the power of sale contained in this Mortgage or (ii) entry of a judgment enforcing this Mortgage if: (a) Borrower pays Lender all sums constituting the default actually existing under this Mortgage, the Note and notes securing Future Advances, if any, at the commencement of foreclosure proceedings under this Mortgage; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage and in enforcing Lender's remedies as provided in paragraph 18 hereof, including, but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

20. **Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 18 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 18 hereof or abandonment of the Property, and at any time prior to the expiration of any period of redemption following sale of the Property, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

21. **Future Advances.** Upon request of Borrower, Lender, at Lender's option prior to discharge of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note plus US\$.

22. **Release.** Upon payment of all sums secured by this Mortgage, Lender shall discharge this Mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any.

23. **Waiver of Homestead.** Borrower hereby waives all right of homestead exemption in the Property.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

Witnesses:

Daniel J. Decker

—Borrower

Becky A. Decker

—Borrower

STATE OF MINNESOTA, Hennepin County ss:

On this 18th day of April

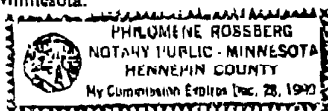
Daniel J. Decker and Becky A. Decker, husband and wife, personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that they executed the same as the free act and deed.

My Commission expires:

Notary Public

Southwest Fidelity State Bank

This instrument was prepared by 7600 Parklawn Avenue, of Edina, Minnesota.



(Space Below This Line Reserved For Lender and Recorder)

Registration Tax Lien of \$60.30 paid

Treasurer: 14197

County Treasurer: [Signature]

County Auditor: [Signature]

County Clerk: [Signature]

County Recorder: [Signature]

Office of County Recorder  
Scott County, Minn.

I hereby certify that the within instrument was filed in this office for record on the 4th day of May A.D. 1991 at 1:30 o'clock and duly recorded in Document No. 169435

Paul W. Warner  
County Recorder

By \_\_\_\_\_ Deputy

WERNERKIRCHEN  
ABSTRACT CO.  
2601 Lawls St. - Box 206  
Edina, Minn. 55379  
Phone: 445-6246  
Tel. 4

Assignment of Mortgage  
By Corporation.

Form No. 47-M

Minneapolis Edition of the Minnesota Real Estate Law Book, 1974

**Know All Men by these Presents, That**

Southwest Fidelity State Bank of Edina  
a corporation duly organized and existing under the laws of the State of Minnesota  
party of the first part, in consideration of the sum of One Dollar and other good and  
Valuable Consideration  
in hand paid by Minnesota Housing Finance Agency Dollars,

and Y of the second part, receipt whereof is hereby acknowledged, does hereby set, assign, transfer,  
and set over, to said part Y of the second part, its successors  
mortgage executed by Daniel J. Becker and Becky A. Becker, husband and wife  
as mortgagor to Southwest Fidelity State Bank of Edina

as mortgagor, bearing date the 18th day of April, 1979  
filed for record in the office of the County Recorder of the State of Minnesota, on the 4th day of May, 1979  
and recorded in book page 1279 of  
as Document No. 0169435

together with all right and interest in the land therein described, and in the note and obligation  
therein specified, and in the debt thereby secured; and hereby constitutes and appoints said part Y of the  
second part its attorney-in-fact, irrevocable to collect and receive said debt and to foreclose,  
enforce, and satisfy said mortgage the same as it might or could have done were here present; not  
executed, but at the cost and expense of second part, and does hereby covenant with said part Y of  
the second part, its successors and assigns, that there is still due and unpaid of the debt  
secured by said mortgage the sum of Forty thousand two hundred and no/100ths Dollars.  
with interest thereon at 6.75 per cent per annum from the 18th day of April, 1979, and that it has good right to sell, assign, and transfer the  
same.

In Testimony Whereof, The said first party has caused these  
presents to be executed in its corporate name by its  
President and its Mortgage Loan Officer  
and its corporate seal to be hereunto affixed this 18th day  
of April, 1979.

SOUTHWEST FIDELITY STATE BANK OF EDINA

By

Its

J. W. Morton

President

Philomene Rossberg

Its Mortgage Loan Officer

State of Minnesota,

County of Hennepin

The foregoing instrument was acknowledged before me  
this 18th day of April, 1979.

by J. W. Morton, President

(NAME OF OFFICER OR AGENT, TITLE OF OFFICER OR AGENT)

and by Philomene Rossberg, Mortgage Loan Officer

(NAME OF OFFICER OR AGENT, TITLE OF OFFICER OR AGENT)

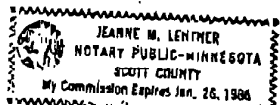
of Southwest Fidelity State Bank of Edina

(NAME OF CORPORATION, SIGNIFYING)

Minnesota

(STATE OR PLACE OF INCORPORATION)

corporation, on behalf of the corporation,



Jeanne M. Lenther  
(SIGNATURE OF PERSON TAKING AS A NON-RESIDENT)

THIS INSTRUMENT WAS DRAFTED BY  
S. W. Fidelity State Bank of Edina

7600 Parklawn Avenue, (Name)  
Edina, Minnesota 55435 (Address)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

---

In Re: Daniel J. Decker and Becky A. Decker,

Debtors: Chapter 13 Case  
Case No. BKY 04-31806-GFK.

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MEMORANDUM OF LAW

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Minnesota Housing Finance Agency (**Movant**) submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

**FACTS**

Movant holds a valid, duly perfected mortgage on certain real property owned by Debtors. Debtors' confirmed Chapter 13 Plan (**Plan**) requires Debtors to make post-petition mortgage payments directly to Movant, when due. Debtors are delinquent in respect to post-petition mortgage payments for the months of August 2004 through October 2004 in the amount of \$1,020.11.

**ARGUMENT**

Under §362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. §362(d)(1). Debtors have failed to make the payments required by the terms of the Plan. Such a failure constitutes cause for lifting the automatic stay pursuant to 11 U.S.C. §362(d)(1). First Federal Savings and Loan

Association of Minneapolis v. Whitebread, 18 B.R. 192 (Bkrtcy. D. Minn. 1982).

Furthermore, debtors have otherwise failed to provide Movant with adequate protection of its interest in the property.

Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay. In Re Tainan, 48 B.R. 250 (Bkrtcy E.D. Pa. 1985); In Re Quinlan, 12 B.R. 516 (Bkrtcy. W.D. Wis. 1981).

Accordingly, Movant is entitled to an order terminating the stay of 11 U.S.C. §362(a) and authorizing it to foreclose its mortgage on the property.

Dated this 5th day of October, 2004.

**PETERSON, FRAM AND BERGMAN**  
A Professional Association

BY: /e/ Michael T. Oberle  
Michael T. Oberle  
Atty. Reg. #130126

**Attorneys for Movant**  
Suite 300, 50 East Fifth Street  
St. Paul, Minnesota 55101  
Telephone: (651) 291-8955

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

---

**In Re: Daniel J. Decker and Becky A. Decker,**

**Debtors: Chapter 13 Case  
Case No. BKY 04-31806-GFK.**

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**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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I, Michael T. Oberle, employed by **PETERSON, FRAM AND BERGMAN, P.A.**, attorneys licensed to practice in this court, with an office at Suite 300, 50 East Fifth Street, St. Paul, MN, 55101, declare that on October 5, 2004 I served the annexed: a) Notice of Hearing and Motion for Relief from Stay, b) Affidavit in Support of Motion for Relief from Stay, c) Memorandum of Law, and d) proposed Order for Relief upon each of the parties listed below by mailing to each of them a copy of each thereof, enclosed in an envelope, first class postage prepaid, and by depositing same in the post office at St. Paul, Minnesota, directed to them at their last known addresses, as follows:

United States Trustee  
300 S 4th St # 1015  
Minneapolis MN 55415-1329

US Bank  
P.O. Box 5229  
Cincinnati, OH 45201

Daniel J. Decker and  
Becky A. Decker  
2068 Hilldale Drive  
Shakopee, MN 55379

Jasmine Z. Keller  
Chapter 13 Trustee  
310 Plymouth Bldg.  
12 S 6th Street  
Minneapolis MN 55402

Richard J. Pearson, Esq.  
P.O. Box 120088  
New Brighton, MN 55112

And I declare, under penalty of perjury, that the foregoing is true and correct.

Signed: /e/ Michael T. Oberle

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:           Daniel J. Decker and Becky A.  
                    Decker,

Debtors: Chapter 13 Case  
Case No. BKY 04-31806-GFK.

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**ORDER FOR RELIEF FROM AUTOMATIC STAY**

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The above-entitled matter came before the Court on October 25, 2004, on the motion of Guaranty Residential Lending, Inc. loan servicing agent for Minnesota Housing Finance Agency (**Movant**) seeking relief from the automatic stay of 11 U.S.C. §362(a). Based upon the statements of counsel and all of the files, records and proceedings herein, the Court now finds that cause exists entitling Movant to the requested relief.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that the automatic stay of 11 U.S.C. §362(a) is immediately terminated as to Movant; and, Movant, its successors or assigns, are hereby authorized to foreclose pursuant to Minnesota law that certain Mortgage dated April 18, 1979, filed for record in the office of the County Recorder in and for Scott County, Minnesota, on May 4, 1979, and recorded as Document No. 169435 and covering real property located in Scott County, Minnesota, which is legally described as follows:

Lot One (1), Block One (1), REPLAT of LOTS 1-5-6, Block One, Zoschke's Addition to Shakopee.

Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2004.

---

Gregory F. Kishel  
United States Bankruptcy Judge